

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C. 20554

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In the Matter of

Implementation of Sections 3(n)  
and 332 of the Communications Act

Regulatory Treatment of Mobile  
Services

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) GN Docket No. 93-252  
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COMMENTS

NYNEX Corporation ("NYNEX"), on behalf of New York Telephone Company, New England Telephone and Telegraph Company, and NYNEX Mobile Communications Company, hereby comments on the May 20, 1994 Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned matter.

I. INTRODUCTION

In the FNPRM, the Commission proposes to amend its mobile services rules to ensure that competitors in the mobile services marketplace are subject to comparable technical, operational and licensing requirements. NYNEX supports the proposed rule amendments. Commercial Mobile Radio Service ("CMRS") providers that offer end user services that are functionally equivalent should be subject to the same regulatory treatment.

The Commission also proposes to adopt a general cap on the amount of spectrum that an entity may use to provide CMRS services. The Commission proposes to set this cap at 40 MHz.

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NYNEX opposes the adoption of a general spectrum cap. While the adoption of such a general cap might promote the goal of administrative simplicity, it could serve to needlessly deny the public the benefits of new products and services that could, and indeed in some cases would only be provided by incumbent licensees.<sup>1</sup> Moreover, the adoption of a general spectrum cap would unnecessarily prejudice the manner in which eligibility for, and the eventual use of, future spectrum allocations would be handled.

NYNEX does not believe that any actual need, as contrasted to the theoretical concerns expressed by the Commission, has been established that would justify the imposition of a general spectrum cap. To the extent that such a need could be shown, any limitations on the aggregation of spectrum should only be undertaken based upon a specific analysis of the competitive conditions that exist in each market. For this reason, NYNEX suggests that it would be preferable for the Commission to address possible anticompetitive effects arising from the concentration of control of spectrum in the context of individual applications for new licenses or applications seeking Commission approval for the transfer of control or assignment of existing licenses. Furthermore, as it has done in the past, the Commission could

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<sup>1</sup> NYNEX doubts that the adoption of a spectrum cap will meet the goal of administrative simplicity. The Commission should anticipate the receipt of numerous requests for waiver of its rules which will surely be opposed. It is likely that the Commission's decision on these waiver requests will be appealed.

consider the adoption of appropriate eligibility criteria and spectrum aggregation limits in the specific context of a rulemaking proceeding providing for the allocation and use of new spectrum.

II. THE COMMISSION MUST ENSURE REGULATORY PARITY FOR COMPETING CMRS PROVIDERS.

Under the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), the Commission must ensure that private land mobile licensees who are reclassified as CMRS providers are subject to technical requirements comparable to those that apply to providers of "substantially similar" common carrier services. In the FNPRM, the Commission proposes to base the determination of substantial similarity primarily on whether the CMRS providers in question compete to meet similar customer demands for services. NYNEX agrees with this approach. The Commission is thus correct in concluding that wide-area SMR service and cellular service are substantially similar and should be regulated on a comparable basis.

To the extent that cellular, PCS, ESMR and SMR providers offer end user services that are functionally like, they should all be subject to the same regulatory treatment. Thus, in general, NYNEX supports the proposed amendments to the Commission's technical, operational and licensing rules. For reasons of regulatory parity and service quality, NYNEX agrees that Part 90 licensees should be subject to the same co-channel interference, modulation and emission, and interoperability requirements as cellular carriers. These requirements will enhance or maintain high quality service to all customers.

NYNEX also agrees that Part 90 mobile service licensees should be required to construct their facilities within 12 months. However, as currently permitted under Part 22, all Part 90 and Part 22 licensees should be able to obtain relief from this requirement where unexpected difficulties (e.g., zoning problems) are encountered.

NYNEX also supports the Commission's tentative conclusion that loading requirements should be eliminated for reclassified Part 90 licensees. We agree that the Commission's coverage requirements and construction timetables are sufficient to ensure efficient use of spectrum.

### III. THE COMMISSION SHOULD NOT ADOPT A GENERAL SPECTRUM CAP.

The Commission proposes to implement a general CMRS spectrum cap (FNPRM, para. 43). The Commission concludes that the cap is made necessary by its concern that "licensees with the ability to acquire large amounts of CMRS spectrum in a given area could acquire excessive marketpower by potentially reducing the numbers of competing providers, not only within specific service categories but also in CMRS generally" (FNPRM, para. 89). NYNEX opposes the Commission's proposal to adopt a general spectrum cap of 40 MHz for CMRS providers.

The Commission's proposal is clearly premature. There is no evidence that entities holding large amounts of spectrum have exercised or will exercise undue market power to limit competition. Moreover, the Commission's proposal to adopt a general cap of 40 MHz is not rationally related to the concern sought to be addressed by the rule. The Commission's proposal

thus fails to recognize that a 40 MHz cap in markets such as New York, Boston, Chicago, Miami and Los Angeles may not be appropriate in light of the number and size of competitors serving the market and the intensity of competition between them. Furthermore, as the Commission itself concedes (para. 90), the amount of spectrum held by an entity may not directly equate to market power. CMRS consists of several discrete markets that do not compete with one another. Thus, there is no danger that permitting an entity to acquire spectrum in one market (e.g., cellular) would affect competition in another market (e.g., wireless video).


The Commission has recognized that limitations on spectrum eligibility could have the undesirable effect of limiting participation in the development of new services by entities that are most qualified to do so. The exclusion of these entities could result in the delay of new products and services to the public. In addition, an all encompassing cap as contemplated by the Commission will stifle innovation and creativity in the marketplace. Carriers will be less likely to experiment with new wireless services (e.g., wireless video, data, etc.) if they are prevented from entering the marketplace for those services due to a spectrum cap. The Commission must carefully balance the need to promote the maximum number of competitors in the marketplace with the need to spur the development of new technologies and services.

If the Commission establishes a cap, it should do so based upon a specific analysis of the competitive conditions that exist in each market. Moreover, the Commission should

consider establishing caps only on future spectrum allocations as part of the rulemaking proceedings that will establish the guidelines for services to be provided on those new bands. In this way, the Commission can consider all the factors associated with the frequency allocations prior to determining a cap (e.g., the amount of frequency to be allocated, the number of preferred entrants, services to be provided, frequency allocations for existing providers, etc.).

While NYNEX believes that adoption of a general spectrum cap is not needed, considerations of regulatory parity demand that any such cap be imposed on all competing CMRS, including PCS, providers on an equitable basis, and not be limited to cellular carriers or LECs. Thus, for example, ESMR providers with a 10 MHz allocation of spectrum being used to provide cellular or PCS-like services should only be eligible for an additional 30 MHz of PCS spectrum. This will ensure regulatory parity with cellular carriers who are only eligible at the present time to acquire an additional 10 MHz of PCS spectrum for a total of 35 MHz within their region.

Respectfully submitted,  
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